



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 3PM Real Estate Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR-DR, OPR-DR, FFL
Tenant: CNR-MT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenant I order the tenant's application dismissed without liberty to reapply.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she is not recording this dispute resolution hearing.

The agent confirmed her email addresses for service of this decision and order.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$9,500.00. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenant has increased to \$11,550.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$11,550.00.

To support the amended claim, I allowed the agent to upload an updated account ledger from January to March of 2022.

Preliminary Issue- Service

The agent testified that the tenant was served with a copy of this application for dispute resolution and the landlord's evidence via registered mail on January 14, 2022. The landlord entered into evidence a Canada Post registered mail receipt stating same. I find that the tenant was deemed served with the landlord's application for dispute resolution and the landlord's evidence on January 19, 2022, five days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. AR signed a tenancy agreement for the subject rental property for a tenancy starting October 1, 2020 (the "October 2020 tenancy agreement"). At that time the tenant was AR's roommate. On June 1, 2021, at the request of the tenant, and as agreed by AR, the October 2020 tenancy agreement was amended to add the tenant (the "amended tenancy agreement"). The amended tenancy agreement, bearing the tenant's signature dated June 1, 2021, was entered into evidence. The amended tenancy agreement states that rent in the amount of \$1,800.00 is due on the first day of each month.

The agent provided the following undisputed testimony. AR moved out August 1, 2021. The tenant requested that a new tenancy agreement listing only himself as a tenant be signed. The landlord agreed and a new tenancy agreement between the landlord and

the tenant was signed on September 20, 2021 for a tenancy starting on October 1, 2021 (the "October 2021 tenancy agreement"). The October 2021 tenancy agreement, signed by the tenant and an agent of the landlord, was entered into evidence. The October 2021 tenancy agreement states that rent in the amount of \$1,800.00 is due on the first day of each day. The agent testified that rent was due on the first day of each month.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent dated December 10, 2021 (the "10 Day Notice") was posted on the tenant's door on December 11, 2021. A witnessed proof of service form stating same was entered into evidence. The 10 Day Notice was entered into evidence and states that the tenant failed to pay \$9,500.00 that was due on December 1, 2021. The effective date of the 10 Day Notice is December 24, 2021.

The agent testified that the 10 Day Notice was served because the tenant did not pay \$9,500.00 in rent accumulated between June 1 of 2021 and December 1, 2021. The agent entered into evidence a document titled "2021 Monthly Rental Income and Expense Statement", which states the outstanding rent balance for each month in 2021. The above document states that the tenant owes the following amounts for the following months:

- June 2021- \$500.00
- July 2021- \$1,800.00
- August 2021- \$1,800.00
- September 2021- \$1,800.00
- November 2021- \$1,800.00
- December 2021- \$1,800.00

The agent testified that the tenant paid \$1,300.00 towards June 2021's rent and paid October 2021's rent in full but did not pay any rent for the months of July, August, September, November and December 2021.

The agent entered into evidence a document titled "2022 Monthly Rental Income and Expense Statement", which states the outstanding rent balance for each month in 2022. The above document states that the tenant owes the following amounts for the following months:

- January 2022- \$1,400.00
- February 2022- \$300.00
- March 2022- \$350.00

The agent testified that the tenant paid \$400.00 on January 4, 2022, \$1,500.00 in February 2022 and \$1,450.00 in March of 2022.

The tenant filed to dispute the 10 Day Notice on December 21, 2022.

Analysis

Based on the amended tenancy agreement entered into evidence and the October 2021 tenancy agreement entered into evidence, I find that the tenant was responsible for the payment of rent from June 1, 2021 to the current date.

Based on the agent's testimony that rent was due on the first day of each month and the fact that the amended tenancy agreement states that rent was due on the first day of each month, I find, on a balance of probabilities, that the author of the October 2021 tenancy agreement erroneously selected the box "day" rather than "month" regarding when rent was due. I find that rent for the duration of the amended tenancy agreement and the October 2021 tenancy agreement was \$1,800.00 was due on the first day of each month.

Based on the witnessed proof of service document entered into evidence and the undisputed testimony of the agent, I find that the 10 Day Notice was posted on the tenant's door on December 11, 2021, in accordance with section 88 of the *Act*. I find that the tenant was deemed served with the 10 Day Notice on December 14, 2021, three days after the 10 Day Notice was posted, in accordance with section 90 of the *Act*. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Based on the undisputed testimony of the agent and the 2021 Monthly Rental Income and Expense Statement, I find that tenant failed to pay rent in the amount of \$1,800.00 on the first day of each month, contrary to section 26(1) of the *Act*. I find that on December 1, 2021, the tenant owed \$9,500.00 in unpaid rent as follows:

- June 2021- \$500.00
- July 2021- \$1,800.00
- August 2021- \$1,800.00

- September 2021- \$1,800.00
- November 2021- \$1,800.00
- December 2021- \$1,800.00
- Total: \$9,500.00

Based on the undisputed testimony of the agent and the 2022 Monthly Rental Income and Expense Statement, I find that tenant failed to pay rent in the amount of \$1,800.00 on the first day of each month, contrary to section 26(1) of the *Act*. I find that as of the date of this hearing, the tenant owed \$2,050.00 in unpaid rent from January to March 2022 as follows:

- January 2022- \$1,400.00
- February 2022- \$300.00
- March 2022- \$350.00
- Total: \$2,050.00

I accept the agent's testimony that the first rent payment received from the tenant after the 10 Day Notice was served on the tenant, was on January 4, 2022, for \$400.00. I find that the total balance of rent owed by the tenant to the landlord from June 2021 to March 2022 is \$11,550.00.

Section 67 of the *Act* states:

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the landlord has proved the value of their loss of rent by way of the 2021 and 2022 Monthly Rental Income and Expense Statements. I find this loss directly stemmed from the tenant's breach of section 26(1) of the *Act*. Pursuant to section 67 of the *Act*, I award the landlord a Monetary Order against the tenant, in the amount of \$11,550.00 for unpaid rent.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* states:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed testimony of the agent and the 2021 and 2022 Monthly Rental Income and Expense Statements, I find that the tenant did not pay the outstanding rent within five days of the tenant's deemed receipt of the 10 Day Notice. The tenant filed to dispute the 10 Day Notice seven days after the tenant was deemed to have received the Notice, on Tuesday December 21, 2021. I note that date by which the tenant was required to file to dispute the 10 Day Notice, December 19, 2021, was a Sunday, and so the date for filing to dispute the 10 Day Notice was extended to Monday December 20, 2021. I find that the tenant did not file to dispute the 10 Day Notice within five days from its deemed receipt.

Pursuant to section 46(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, that being December 24, 2021 because the tenant failed to file to dispute the 10 Day Notice or pay the outstanding rent within five days of the tenant's deemed receipt of the 10 Day Notice. The tenant's application to cancel the 10 Day Notice is therefore dismissed without liberty to reapply. Pursuant to sections 46 and 55 of the *Act*, I find that the landlord is entitled to two-day Order of Possession for nonpayment of rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$11,650.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 31, 2022

Residential Tenancy Branch